

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5840 OF 2001

Tukaram Ganapati More	...	Petitioner
Vs.		
Vishnu G. Nandekar and others	...	Respondents

Mr. Manoj Patil for Petitioner.
Mr. S. M. Kamble for Respondent Nos.1 to 3.
Mr. S. L. Babar, AGP for Respondent Nos.4 and 5-State.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 21, 2019

P.C. :

Heard Mr. Patil, learned counsel for the petitioner; Mr. Kamble, learned counsel for respondent Nos.1, 2 and 3; and Mr. Babar, learned AGP for respondent Nos.4 and 5-State.

2. By filing this Petition under Article 227 of the Constitution of India, petitioner has assailed legality and correctness of order dated 27.04.2001 passed by the Maharashtra Revenue Tribunal, Pune, Camp at Kolhapur in Appeal No.MRT-8/A/2001/Kolhapur dismissing the appeal filed by respondent Nos.1, 2 and 3 but at the same time ordering that since petitioner had committed breach of condition of grant, possession of the land should not be given to the petitioner but should be retained with the Government.

3. Case of the petitioner is that the land in question admeasuring 9 Hectares and 19 Ares is situated at Block No.605 of Village Tirawade, Taluka Bhudargad in the district of Kolhapur. The land in question was given as grant by the Government to the predecessor in interest of the petitioner, Ganpat Bala More, who was an army person.

3.1. According to the petitioner, respondent Nos.1 to 3 had trespassed into the land in question in an unauthorized manner and started

cultivation thereon. When his father died, the land in question was mutated in the name of the eldest son Dattatraya Ganpat More in the Record of Rights. In view of unauthorized possession of respondent Nos.1, 2 and 3 over the land in question, petitioner moved application before the Tahsildar, Bhudargad for possession over the land in question.

4. Tahsildar passed order dated 07.03.2001 holding that respondent Nos.1, 2 and 3 were in unauthorized possession and that they should be removed from the land in question whereafter possession of the same should be handed over to the petitioner.

4.1. Against this order of the Tahsildar, respondent Nos.1, 2 and 3 preferred appeal before the Maharashtra Revenue Tribunal, Pune, Camp at Kolhapur (Tribunal), which was registered as Appeal No.MRT-8/A/2001/Kolhapur. By the impugned order dated 27.04.2001, Tribunal dismissed the appeal but at the same time held that possession of the land in question should not be handed over to the petitioner as there was breach of condition of grant and that the land should be retained by the Government.

5. Aggrieved by the said order, present writ petition has been filed.

6. Learned counsel for the petitioner submits that the Tribunal had clearly exceeded its jurisdiction as it was nobody's case that the land should revert back to the Government. If the Tribunal found the order of the Tahsildar to be just and proper which the Tribunal found, it should have confined itself to affirming the order of the Tahsildar and not passing order adverse to the petitioner.

7. On the other hand, learned counsel for respondent Nos.1, 2 and 3 submits that respondent Nos.1, 2 and 3 are actually the tenants and it was they who were cultivating the land in question being in possession thereof. Referring to the grant of the land in question in favour of the petitioner, he submits that it was clear that the condition accompanying

the grant was that the grantee i.e. the predecessor-in-interest of the petitioner was required to cultivate the land personally but going by his own case, petitioner has demonstrated that neither his predecessor-in-interest was in possession over the land nor was he cultivating the same. Therefore, there was clear breach of the Government grant.

7.1. Viewed from the above perspective, there is no infirmity in the order of the Tribunal, which is liable to be affirmed.

7.2. Mr. Kamble, learned counsel for respondent Nos.1, 2 and 3 however submits that respondent Nos.1, 2 and 3 had also filed a writ petition being Writ Petition (St.) No.36225 of 2001 assailing the order of the Tribunal dated 27.04.2001 but the same was dismissed for non-prosecution on 09.02.2004. Civil Application filed for restoration of the writ petition in the year 2014 is still pending.

8. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

9. From a perusal of the order dated 07.03.2001 passed by the Tahsildar, it is seen that Tahsildar considered respondent Nos.1, 2 and 3 to be in illegal possession of the land in question which was granted to predecessor-in-interest of the petitioner. Accordingly, direction was issued to the Board Officer, Kadgaon to handover possession of the land in question to the petitioner.

10. This order came to be challenged by respondent Nos.1, 2 and 3 in appeal before the Tribunal. Tribunal held that the land in question was Government land and, therefore, provisions of the Tenancy Act would not be applicable. Tribunal came to the conclusion that there was no substance in the appeal and accordingly the appeal was dismissed.

10.1. However, Tribunal went a step ahead and held that since the original grantee had committed a breach of condition of grant, the order

of the Tahsildar directing handing over of possession of the land in question to the petitioner was held to be erroneous. Accordingly, that part of the order of the Tahsildar was interfered with the direction that possession of the land in question should not be given back to the petitioner but should be retained with the Government.

11. When the Tribunal had arrived at the finding that the appeal did not have any substance and, therefore, had rightly dismissed the same, there was no reason for the Tribunal to have proceeded further into an arena, which was neither the case of the appellants (respondent Nos.1, 2 and 3) nor that of respondent No.3 (petitioner herein). As a matter of fact, Government had not taken any exception to any breach of condition of the grant as held by the Tribunal.

12. If the Tribunal wanted to traverse beyond the appeal of the appellant, it ought to have notified respondent No.3 therein i.e. petitioner herein that this was an issue which the Tribunal would like to adjudicate. In the absence of the same, such action of the Tribunal was clearly unauthorized and beyond jurisdiction.

13. There is one more aspect to the matter. Challenge made by respondent Nos.1, 2 and 3 to the aforesaid order dated 27.04.2001 of the Tribunal by filing writ petition came to be dismissed by this Court, though for non-prosecution, way back in the year 2004. 10 years thereafter, respondent Nos.1, 2 and 3 have filed restoration application, which is stated to be pending for the last 5 years without any order.

14. When the writ petition of respondent Nos.1, 2 and 3 assailing the same order of the Tribunal was dismissed way back in the year 2004, it would be wholly incongruous for this Court to interfere with that portion of the order of the Tribunal directing retention of possession of the land in question by the Government which in any case is legally unsustainable.

15. For the aforesaid reasons, that portion of the order dated 27.04.2001 passed by the Tribunal directing that possession over the land in question be retained with the Government is set aside and quashed.

16. Writ Petition is accordingly allowed. No cost.

(UJJAL BHUYAN, J.)

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